



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 22, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John M. Gayden, M.D.

[REDACTED]

Nathaniel White, Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower Building- Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of John M. Gayden, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17- 236) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[REDACTED]
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: *[Signature]*
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
JOHN M. GAYDEN, M.D.

DETERMINATION
AND
ORDER

X BPMC-17-236

A hearing was held on July 19, 2017, at the offices of the New York State Department of Health ("Department").¹ Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), ANDREW MERRITT, M.D., Chairperson, DIANE SIXSMITH, M.D., and JANET AXELROD, ESQ., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. JUDE MULVEY, ADMINISTRATIVE LAW JUDGE ("ALJ"), served as the administrative officer.

The Department appeared by Nathaniel White, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated May 18, 2017, were served upon John M. Gayden, M.D. ("Respondent"), who did not appear at the hearing.² There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") § 6530(9)(d). The Hearing Committee unanimously votes 3-0 to

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

² Copies of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix I. After several attempts at personal service at the Respondent's last known address in [REDACTED] as well as at a second address in [REDACTED] registered with the New York State Education Department as Respondent's address, the Petitioner sent the Notice of Hearing and Statement of Charges by certified mail to both locations, thereby establishing jurisdiction. [Exhibits 2, 3 and 4]. After considering this, the ALJ determined that the hearing on the merits could continue, despite the Respondent's absence.

revoke the Respondent's license to practice medicine in New York.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d), "having (his) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in such disciplinary action taken against his license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York.

This case is based on the Final Order of the Florida Board of Medicine ("Florida Board") dated April 21, 2015, which accepted Respondent's offer to voluntarily relinquish his license to practice medicine in the State of Florida to avoid further administrative action stemming from disciplinary complaints, with a specific proviso that Respondent agreed to never again apply for licensure as a physician in the State of Florida. The Final Order constituted discipline upon Respondent's license. The Final Order resolved administrative complaints filed against the Respondent alleging, *inter alia*, that the Respondent prescribed inappropriate and excessive amounts of controlled substances to three patients, that he failed to monitor their use of the controlled substances, failed to perform evaluations at appropriate intervals, failed to maintain adequate medical records for all three patients, and that Respondent engaged in a sexual relationship with a 17-year-old patient for whom he provided oxycodone and marijuana for recreational use. The Department charges that had the Respondent's conduct occurred in New York, it would have constituted practicing the profession with negligence on more than one occasion, gross negligence on a particular occasion, incompetence on more than one occasion, gross incompetence, exercising undue influence

on a patient, conduct in the practice of medicine which evidences moral unfitness to practice medicine and failing to maintain a record of the patient which accurately reflects the evaluation of the patient, as defined in Educ. Law §§ 6530(3), 6530(4), 6530(5), 6530(6), 6530(17), 6530(20) and 6530(32), respectively.

FINDINGS OF FACT

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."]. The following findings are the unanimous determinations of the Hearing Committee:

1. John M. Gayden, M.D., the Respondent, was licensed to practice medicine in New York on November 14, 1983, by the issuance of license number 156717 by the Education Department [Ex. 3].
2. The Respondent was charged by Administrative Complaint dated January 30, 2015 by the State of Florida Department of Health with conduct including that the Respondent prescribed inappropriate and excessive amounts of controlled substances to three patients, that he failed to monitor their use of the controlled substances, failed to perform evaluations at appropriate intervals, failed to maintain adequate medical records for all three patients, and that Respondent engaged in a sexual relationship with a 17-year-old patient for whom he provided oxycodone and marijuana for recreational use [Ex 7].
3. The Respondent offered to voluntarily relinquish his license to practice medicine in the State of Florida to avoid further administrative action with respect to the disciplinary charges against him [Ex 8].

4. In a Final Order dated April 21, 2015, the Florida Board accepted the Respondent's offer to voluntarily relinquish his license to practice medicine in the State of Florida. The Final Order constituted disciplinary action against Respondent's Florida medical license. As part of the Order, the Respondent agreed to the voluntarily relinquishment of his State of Florida medical license and to never again reapply for a medical license in that state. [Ex. 8].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having Respondent committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

New York State Education Law §6530 (9)(d) holds that in instances where a New York State licensed physician is subject to disciplinary action in another state after the imposition of disciplinary action by that other state, and where the underlying conduct resulting in the disciplinary action would, if committed in New York, constitute professional misconduct under the laws of this State, such conduct will constitute professional misconduct. The Department has proven both prongs required to establish professional misconduct in this case. First, the Department presented evidence to show that the State of Florida instituted professional disciplinary charges against the Respondent. The Respondent voluntarily relinquished his Florida medical license to avoid further administrative action on the Florida disciplinary charges. The underlying complaint alleged the Respondent issued prescriptions to patients for dangerous quantities and combinations of controlled substances without performing proper assessments or monitoring and absent confirming the medical necessity for the drugs. The complaint further alleged that the Respondent engaged in a sexual relationship with a 17-

year-old patient, and that he provided her with oxycodone and marijuana for recreational use immediately prior to engaging her in sexual activities [Ex. 7].

Like Florida, in cases where physicians prescribe controlled substances, New York requires physicians to perform and document physical examinations and assessments of patients and document the reasons for prescribing such drugs, which the Respondent failed to do. Entering into a sexual relationship with a patient violates the boundaries of the physician-patient relationship in both Florida and New York. The Respondent's conduct, had it occurred in New York, would have constituted a failure to maintain a record for a patient which accurately reflects the evaluation of the patient, conduct in the practice of medicine which evidences moral unfitness to practice medicine, exercising undue influence on a patient and practicing the profession with negligence on more than one occasion, gross negligence on a particular occasion, incompetence on more than one occasion and gross incompetence, as defined in Educ. Law §§ 6530(32), 6530(20), 6530(17), 6530(3), 6530(4), 6530(5) and 6530(6), respectively.

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee considered the risk of severe harm caused by the Respondent's inappropriate prescriptions, and the inappropriateness of a relationship with a 17-year-old patient. As such, the Hearing Committee unanimously concluded that the evidence supports revocation of the Respondent's New York medical license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;
2. The Respondent's license to practice as a physician in the state of New York is hereby **REVOKED**;
3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail or upon the Respondent at his last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
8/14, 2017

[REDACTED]
Andrew Merritt, M.D.
Chairperson

Diane Sixsmith, M.D.
Janet Axelrod, J.D.

TO: John M. Gayden, M.D.
[REDACTED]
[REDACTED]

Nathaniel White, Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JOHN M. GAYDEN, JR., M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: JOHN M. GAYDEN, JR., M.D.
[REDACTED]

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on July 19, 2017 at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150

¹ For GPS purposes, enter "Menands", not "Albany".



Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney; Initial here _____

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
May 18 2017

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Nathaniel White
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

JOHN M. GAYDEN, JR., M.D.

STATEMENT
OF
CHARGES

JOHN M. GAYDEN, JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about November 14, 1983, by the issuance of license number 156717 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 21, 2015, the Florida Board of Medicine ("Florida Board") issued a Final Order whereby the Florida Board accepted Respondent's offer to voluntarily relinquish his license to practice medicine in the State of Florida. The Final Order constituted disciplinary action against Respondent's license. The Final Order resolved two administrative complaints filed against Respondent, one which alleged that Respondent, among other things, prescribed inappropriate and excessive amounts of controlled substances to three patients, failed to monitor their use of controlled substances, failed to perform adequate evaluations at appropriate intervals for those patients, and failed to maintain an adequate medical record for all three patients. The Administrative Complaint also alleged that Respondent engaged in a sexual relationship with a 17-year-old female who Respondent provided oxycodone and marijuana for recreational use. The Administrative Complaint further alleged that Respondent provided the 17-year-old female controlled substances immediately prior to engaging her in sexual activities. It was further alleged that Respondent prescribed the 17-year-old female Valtrex to treat a medical condition thus establishing a physician-patient relationship. The Administrative Complaint charged Respondent with violating various provisions of Florida law that subjected Respondent to disciplinary action.

B. The conduct resulting in the Florida disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to the following sections of New York State law:

1. New York Education Law § 6530(3) (practicing the profession with negligence on more than one occasion);
2. New York Education Law § 6530(4) (practicing the profession with gross negligence on a particular occasion);
3. New York Education Law § 6530(5) (practicing the profession with incompetence on more than one occasion);
4. New York Education Law § 6530(6) (practicing the profession with gross incompetence);
5. New York Education Law § 6530(17) (exercising undue influence on a patient);
6. New York Education Law § 6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine); and/or
7. New York Education Law § 6530(32) (failing to maintain a record for each patient).

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530[3], [4], [5], [6], [17], [20] and/or [32]) as alleged in the facts of the following:

1. Paragraphs A and B.

DATE: May 18, 2017
Albany, New York

[REDACTED]
MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct